U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210

MAR - 9 2005

MEMORANDUM TO: CENTER DIRECTORS
CERTIFYING OFFICERS
NATIONAL OFFICE STAFF

FROM: WILLIAM L. CARLSON
Chief, Division of Foreign Labor Certification

SUBJECT: Restrictive/Incorrect Language in H-2A Applications

It has come to our attention that a number of H-2A employers have been submitting orders where the job order implicitly or explicitly states that the I-9 Form must be completed by each worker prior to employment. This suggests that it is the responsibility of the State Workforce Agencies (SWA) to screen potential employees for eligibility to work in the United States. This statement also suggests that the completion of the I-9 is a condition of employment for workers. This language is restrictive and not consistent with the employer's obligation under the Immigration Reform and Control Act.

The Immigration Reform and Control Act stipulates that it is the responsibility of all United States employers to verify the employment eligibility of its workers. Therefore, employers are required to complete the I-9 Form for all employees. Please note that the I-9 is completed only for people who are actually hired. For purposes of the I-9 Rules, a person is "hired" when he or she begin to work for an employer for wages or other compensation.

Effective immediately, for H-2A purposes, Foreign Labor Certification Field Offices and SWAs should not accept language contained in the job order or assurances which require workers and/or the SWA to complete the I-9 Form prior to employment.

For more information contact Ben Orona at (202) 693-2951.